

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

April 12, 2012

In the Matter of J. C. Britten, Minor.

No. 305962

Crawford Circuit Court

Family Division

LC No. 09-003756-NA

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In the Matter of J. C. Britten, Minor.

No. 306214

Crawford Circuit Court

Family Division

LC No. 09-003756-NA

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Before: RONAYNE KRAUSE, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

In these consolidated appeals, respondents J. Britten (respondent-father) and C. Britten (respondent-mother) each appeal as of right from the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(ii), (g), and (j). We affirm.

Both respondents challenge the trial court's determination that the statutory grounds for termination were established by clear and convincing evidence, and its determination under MCL 712A.19b(5) that termination was in the child's best interests. We review the trial court's findings regarding the existence of a statutory ground for termination, and its decision regarding the child's best interests for clear error, giving deference to the trial court's special opportunity to judge the weight of the evidence and the credibility of the witnesses. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The record does not support respondent-mother's argument that the trial court chose to discredit the testimony of certain witnesses merely to achieve a desired outcome. We also reject respondent-mother's contention that the testimony of Wayne Simmons, who conducted the psychological evaluations of respondents and the child, was the primary basis for the trial court's finding that the statutory grounds for termination were established. Although the trial court gave weight to *portions* of Simmons's testimony, it is clear that the court evaluated that testimony by comparing it to other evidence concerning respondent-mother's progress, including respondent-

mother's own testimony, to determine that respondent-mother had failed to rectify her inability to regulate her emotions to a level where she would no longer cause mental harm to the child.

It is not enough that a parent physically comply with the terms of a parent/agency agreement or case service plan in a child protective proceeding. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). “[A] parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent’s custody.” *Id.* Considering the evidence as a whole, and giving appropriate deference to the trial court’s determination of the credibility and weight of the witnesses’ testimony, we find no clear error in the trial court’s assessment of respondent-mother’s failure to achieve emotional stability, especially in circumstances involving stress or conflict, and the effect of respondent-mother’s emotional instability on the child. *In re JK*, 468 Mich at 209; *In re Miller*, 433 Mich at 337. Further, considering respondent-mother’s lack of progress in addressing this primary issue, and the chronic nature of her mental health issues, the trial court did not clearly err in finding that § 19b(3)(c)(ii) was established by clear and convincing evidence.

The evidence regarding respondent-mother’s continuing struggle to regulate her emotions and its impact on the child also supports the trial court’s determination that §§ 19b(3)(g) and (j) were both established. Given the evidence that respondent-mother was still struggling with her emotional stability and the evidence describing the child’s considerable mental health issues, we reject respondent-mother’s argument that any risk of emotional harm to the child if reunification occurred was based on mere conjecture.

With respect to respondent-father, we hold initially that he has not established any deficiency in the services provided to him while the child was in foster care. See *In re Fried*, 266 Mich App 535, 541-542; 702 NW2d 192 (2005). The record indicates that the services provided in this case contemplated that the respondents intended to jointly care for their child. It was not until the termination hearing that respondent-father proposed caring for the child on his own. However, he did not provide any type of care plan and admitted that he would need some kind of “backup” if respondent-mother was not allowed to see the child. He also agreed that there would be a tendency for the child to “kind of call the shots” in a manner like respondent-mother did in the home.

Respondent-father has not established that his belated proposal to care for the child on his own precluded the trial court from finding the statutory grounds for termination. The evidence supports the trial court’s findings that respondent-father’s extreme passivity allowed respondent-mother to foster the past chaotic home environment for the child, which significantly affected the child’s mental well-being. Similar to respondent-mother, respondent-father physically participated in the services required by the case service plan, but the trial court did not clearly err in finding that respondent-father’s passivity continued to exist and continued to adversely affect his ability to protect the child from respondent-mother or to parent him on his own. Respondent-father’s own testimony indicates that he was afraid of respondent-mother and that he lacked the skills to protect or parent the child without assistance. The evidence was clear and convincing that this condition continued to exist. Considering the length of time that the child had been in foster care, respondent-father’s failure to benefit from the services provided, and other evidence, including Simmons’s assessment of respondent-father’s and the child’s mental health issues, the

trial court did not clearly err in finding that § 19b(3)(c)(ii) was established by clear and convincing evidence. *In re JK*, 468 Mich at 209.

While only one statutory ground for termination is required, *In re Fried*, 266 Mich App at 541, the same evidence also supports the trial court's finding that termination was warranted under § 19b(3)(g). Further, even assuming that respondent-father would continue the child's mental health treatment with Community Mental Health if the child was returned home, the evidence established that respondent-father lacked the ability to protect the child nor had the skills necessary to care for the child on his own. Accordingly, the trial court did not clearly err in finding that § 19b(3)(j) was also established. *In re JK*, 468 Mich at 209.

We conclude that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence with respect to both respondents.

Lastly, the trial court was permitted to consider the entire record in evaluating the child's best interests. *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). A review of that record indicates that the trial court did not clearly err in finding that termination of respondents' parental rights was in the child's best interests. MCL 712A.19b(5). The court appropriately considered the child's fragile mental health and each respondent's inability to satisfy the child's mental and emotional needs in concluding that termination of each respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Amy Ronayne Krause  
/s/ Pat M. Donofrio  
/s/ Karen M. Fort Hood